

Rule 4.13

FREE PRESS - FAIR TRIAL DIRECTIVES

These guidelines are proposed as a means of balancing the public's right to be informed with the accused's right to a fair trial before an impartial jury. While it is the right of a free press to report what occurs in a public proceeding, it is also the responsibility of the bench to take appropriate measures to insure that the deliberations of the jury are based upon what is presented to it in Court. It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(a) **Prior to Arrest.** With respect to a Grand Jury (consistent with the provisions of Rule 6, Federal Rules of Criminal Procedure) or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication that goes beyond the public record or that is not necessarily to inform the public that the investigation is under way, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(b) **From Time of Arrest.** From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication relating to that matter and concerning:

- (1) The prior criminal record (including arrests,

indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may in their discretion make a factual statement of the accused's name, age, residence, occupation, and family status, and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public or any dangers he or she may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests, or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim, if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense; or

(6) Any option as to the accused's guilt or innocence, or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of any official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement at the time of the seizure of any physical evidence other than a confession, admission, or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that

the accused denies the charges made against him or her.

(c) **During the Trial.** During the jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote or refer without comment to public records of the Court in the case.

(d) **Other Information.** Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies or to preclude any lawyer from replying to charges of misconduct that are publicly made against him or her.

(e) **Disclosure by Others.** All Court personnel, including, among others, Marshals, Deputy Marshals, Court Clerks, Bailiffs, Court Reporters, and employees or subcontractors retained by a Court-appointed official reporter, are prohibited from disclosing to any person without authorization by the Court, information relating to a pending Grand Jury or criminal case that is not part of the public records of the Court. The divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(f) **Duty of Court in Special Cases.** In a widely publicized or sensational criminal case, the Court on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such order. Such

a special order might be addressed to some or all of the following subjects:

(1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors, and court officials) which might divulge prejudicial matters not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any matter during their deliberations.

(4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation of witnesses during the trial.

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

(A) an order that no member of the public or news media representative be at any time permitted within the bar railing;

(B) the allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the news reporters.

The Court may also consider making more extensive use of techniques to insure an impartial jury, to include use of change of

venue, sequestration of jurors, sequestration of witnesses, individual voir dire of prospective jurors, cautionary instructions to the jury, the sealing of pretrial motion papers and pleadings, and the holding of sidebar conferences between the Judge and the attorneys during trial in order to rule upon legal and evidentiary issues without being overheard by the jury.

(g) **Closure of Pretrial Proceedings.** Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open court and shall be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the Court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public in whole or in part on the grounds:

(1) that there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the Defendant's right to a fair trial; and

(2) that reasonable alternatives to closure will not adequately protect defendant's right to a fair trial.

If the Court so orders, it shall state for the record its specific findings concerning the need for closure.

(h) **No Direct Restraints on Media.** No rule of Court or judicial order should be promulgated by a United States District Court which would prohibit representatives of the news media from broadcasting or publishing any information in their possession relating to a criminal case.